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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,366

12/31/2003

Paul T. Van Gompel

19,288

1191

23556 7590 04/17/2008
KIMBERLY-CLARK WORLDWIDE, INC.
Catherine E. Wolf
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,366	Applicant(s) VAN GOMPEL ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7, 10, 11, 15, 16, 18, 20, 21, 23, 28, 29, 33, 34, 37, 38, 40, 43, 46, 47, 51, 52 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are
1,2,4,7,10,11,15,16,18,20,21,23,28,29,33,34,37,38,40,43,46,47,51,52 and 55.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 2, 4, 7, 10 – 11, 15 – 16, 18, 20 – 21, 23, 28 – 29, 33 – 34, 37 – 38, 40, 43, 46 – 47, 51 – 52 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melbye et al. (US 5,681,302) and further in view of Carr et al. (US 5,462,537).

As to claims 1 – 2 Melbye provides a disposable garment having a garment length, the disposable garment comprising: an outer layer and an elastic inner layer (figure 5), wherein the elastic inner layer has the claimed perimeter and claimed opening (col. 4, lines 20 – 46) as shown in figure 5. The perimeter of the inner layer is bonded to the outer layer and both the inner and outer layer form the claimed regions as shown in figure 13. Likewise, figure 13 shows the narrowest portion garment to be located in the crotch region. The examiner notes that "a garment length" is not necessarily reflective of the entire length of the garment, and as such, any length thereof may be considered in conjunction with the disclosed openings in order to meet the claimed limitations.

The difference between Melbye and claim 1 is the provision that the crotch region is equal or less than 4 inches.

Carr teaches a garment wherein the crotch region is less than 4 inches as set forth in col. 4, lines 13 – 19.

It would have been obvious to one of ordinary skill in the art to modify the crotch of Melbye because the crotch region of less than 4 inches permits the absorbent structure to fit closely and conformably to the perineum area as taught by Carr in col. 4, lines 13 – 19.

As to claims 4, 7, 11, 23, 29, 40, 43, 47 and 55, see the abstract and figures of Melbye.

Regarding claims 10, 28 and 46, Melbye discloses an elastic layer in both the longitudinal and lateral directions as set forth in col. 4, lines 20 – 60.

With reference to claims 15 – 16, 33 – 34 and 51 – 52, the examiner contends that any length or portion thereof may be considered in order to meet the claimed limitation.

As to claim 18, see figure 13 of Melbye.

With reference to claims 20 – 21, see the rejection of claims 1 and 13.

Regarding claims 37 – 38, see the rejection of claim 1 and col. 1, lines 4 – 13 of Melbye.

Response to Arguments

Applicant's arguments filed January 16, 2008 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Melbye does not teach or suggest a disposable garment having an elastic inner layer wherein the elastic inner layer defines an opening located in an internal position to the elastic inner layer perimeter and wherein the opening is a slit of aperture through a bodyfacing surface of the elastic inner layer, the examiner disagrees. Melbye discloses such a structure in col. 4, lines 20 – 46. With respect to the newly recited opening, the examiner notes that "a garment length" is not necessarily reflective of the entire length of the garment, and as such, any length thereof may be considered in conjunction with the disclosed openings in order to meet the claimed limitations.

With respect to the layer being liquid impermeable, the examiner refers to the abstract of the invention which discloses the layers as elastic. The various figures also depict the elastic layers and such description of the figures reinforce the use of an impermeable elastic material. See, for example, col. 4, lines 20 - 23. Likewise, the figures, especially figure 14, depict intersecting elastic strips that would provide stretching in both directions as claimed. See col. 15, lines 4 - 10. Further, the examiner notes that on page 3 of the instant specification, "elastic" is defined as a range of stretch and the elastic material defined by Melbye would naturally have at least some degree of stretch in both directions due to either the natural characteristics of the material and/or the orientation of elastic materials in both the longitudinal and lateral direction as shown in the figures.

The examiner maintains that the variation in outer layer/inner layer widths is reflected in the teaching of Melbye as specific lengths have not been set forth in the

claims. Likewise, as set forth in the rejection of claim 1, Carr is also concerned with a snug fit, proving an obvious modification.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is

Art Unit: 3761

571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761